Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	CC Docket No. 02-33
Universal Service Obligations of Broadband Providers	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	CC Docket Nos. 95-20, 98-10

Comments of the Independent Telephone and Telecommunications Alliance

The Independent Telephone and Telecommunications Alliance ("ITTA"),[1] on behalf of its midsize incumbent local exchange carrier (ILEC) members, hereby submits the following comments on the Commission's Notice of Proposed Rulemaking in the above-captioned dockets (the "Notice").[2] ITTA strongly supports the Commission's tentative conclusion that wireline broadband Internet access is an information service. The Commission, consistent with this tentative conclusion, should not regulate the provision of such service by LECs, just as the Commission does not regulate the provision of Internet access by Internet service providers that are not affiliated with LECs or other common carriers.

[1] ITTA is an organization of midsize incumbent local exchange carriers (ILECs). ITTA members collectively serve over eight million access lines in over 40 states and offer a diversified range of services to their customers. Most members qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(37).

[2] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *et. al.*, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002).

ITTA believes that the Commission should clarify that ILEC-delivered broadband Internet access services are information services, as defined in the Communications Act of 1934, as amended (the "Act").[3] Such a step would advance the Commission's "primary public policy goal to encourage the ubiquitous availability of broadband services to all Americans."[4] By reducing current regulatory uncertainty as to the classification of these services, the Commission would create a more favorable climate for broadband investment and infrastructure deployment by reducing the level of risk associated with bringing these new broadband services to market. ITTA agrees that the Commission should "reduce the regulatory burdens and regulatory uncertainties the telephone companies face, and thereby provide incentives for those companies to continue or accelerate their investments in critical broadband infrastructure." Notice at ¶ 37.

Consistent with this conclusion, the Commission should not impose any additional regulations on broadband Internet access provided by small and midsize carriers. Thus, ITTA supports the Commission's tentative conclusion that ILEC-delivered broadband Internet access should not be subject to regulation under Title II of the Communications Act. Title II regulatory burdens, particularly if applied to broadband Internet access services provided by midsize and smaller ILECs, could drive up the cost of providing broadband Internet access in rural areas. These carriers have fewer resources to devote to compliance with new and increased regulation, and fewer customers across which to spread compliance costs.

For the same reasons, ITTA also strongly discourages the Commission from imposing additional Title I regulatory burdens on midsize and smaller ILECs that provide

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[3] 47 U.S.C. § 153(20) ("The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.")

broadband Internet access services. First, the Commission's Title I jurisdiction under Section 4(i) of the Act, 47 U.S.C. § 4(i), is limited to acts "not inconsistent with" the Act. No provision of the Act otherwise gives the Commission the jurisdiction to regulate information services to which Section 4(i) would have to relate. Under Title II, the Commission has authority to regulate common carriers to the extent they provide telecommunications services, as defined in the Act, 47 U.S.C. § 153(46). If, as the Commission tentatively concludes, however, broadband Internet access services are "information services," then these services include a "telecommunications" component that constitutes, at most, private carriage beyond the Commission's jurisdictional reach.

Second, as a matter of policy, the Commission should not impose a greater regulatory burden on ILEC-delivered broadband Internet access under Title I than it imposes on ISPs that are not ILEC affiliates. Such action would be inconsistent with the Commission's primary public policy goal to encourage ubiquitous availability of broadband to all Americans because it would place the greatest regulatory burden on those entities – midsize and small carriers – that are best positioned to bring broadband services to rural America. Such action would also violate the Commission's third guiding principle in this proceeding – to allow broadband services to exist in a minimally-regulated environment that promotes investment and innovation, Notice at ¶ 5 – as well as its fourth – to develop an analytical framework that is consistent across multiple platforms.[5]

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[4] Notice at ¶ 3.

[5] Notice at ¶ 6. For similar reasons, the Commission should not impose *Computer Inquiry II*, *Computer Inquiry III*, or other similar unbundling requirements on midsize and smaller carriers' facilities used to provide broadband Internet access services, Notice at ¶ 52. First, midsize and smaller carriers frequently operate in small communities where the market for such services cannot support an unlimited number of broadband providers. If the Commission were to mandate unbundled access to the network for all potential competitors, it would be far more difficult for midsize and smaller carriers to develop the business case in favor of broadband deployment at all. Second, the Commission has already rejected a similar proposal, which would have unbundled

The Commission's historical "unregulation" of the Internet has accompanied tremendous growth in the Internet and new Internet-based services to consumers. As the Commission's Office of Plans and Policy has explained, "[p]erhaps the most important contribution to the success of the Internet that the FCC has made has been its consistent treatment of IP-based services as *unregulated* information services."[6] This success highlights the need for the Commission to "avoid regulation based solely on speculation of a potential future problem."[7]

ILECs' packet-switching capability pursuant to Section 251(c)(3), *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3835 (1999) ("*UNE Remand Order*"). Third, as the Commission recognized in *Computer Inquiry II*, the Commission concluded in that proceeding that only AT&T (prior to its breakup) and GTE would be subject to full structural separation rules because other independent carriers had limited networks and therefore would be "unlikely to be able to 'gain any significant competitive advantage by restricting the access of its competitors to a very limited network of underlying facilities.'" Notice at ¶ 40 (quoting *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384, 468, ¶ 219 (1980)).

[6] Oxman, Jason, *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31 (Office of Plans and Policy, Federal Comm. Comm'n 1999) at 24 (emphasis supplied).

[7] *Id.* at 25.

For the foregoing reasons, the Commission should clarify that broadband Internet access service provided by ILECs is an information service and should not impose additional regulatory burdens on midsize and smaller ILECs that are providing these services.

Respectfully submitted,

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